

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)	
PARTNERS, COUNTRY MUSIC.)	
TELEVISION, INC., PARAMOUNT)	
PICTURES CORPORATION, and BLACK)	
ENTERTAINMENT TELEVISION, LLC,)	
)	
Plaintiffs,)	
)	
vs.)	NO. 07-CV-2203
)	
YOUTUBE, INC., YOUTUBE, LLC,)	
and GOOGLE, INC.,)	
)	
Defendants.)	
)	
THE FOOTBALL ASSOCIATION PREMIER)	
LEAGUE LIMITED, BOURNE CO., et al.,)	
on behalf of themselves and all)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	NO. 07-CV-3582
)	
YOUTUBE, INC., YOUTUBE, LLC, and)	
GOOGLE, INC.,)	
)	
Defendants.)	
)	

VIDEOTAPED DEPOSITION OF KEVIN DONAHUE
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, OCTOBER 15, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 15912

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OCTOBER 15, 2008

9:07 a.m.

VIDEOTAPED DEPOSITION OF KEVIN DONAHUE,
SHEARMAN & STERLING, 525 Market Street,
San Francisco, California, pursuant to notice,
before ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR
License No. 9830.

1 A P P E A R A N C E S:

2

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4 SHEARMAN & STERLING LLP

5 By: KIRSTEN NELSON CUNHA, Esq.

6 COLLEEN M. MERINGOLO, Esq.

7 599 Lexington Avenue

8 New York, New York 10022-6069

9 (212) 848-4000 kirsten.cunha@shearman.com

10 colleen.meringolo@shearman.com

11

12 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

13 BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

14 By: BENJAMIN GALDSTON, Esq.

15 12481 High Bluff Drive, Suite 300

16 San Diego, California 92130-3582

17 (858) 720-3188 beng@blbglaw.com

18

19

20

21

22

23

24

25

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

A P P E A R A N C E S (Continued.)

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
GOOGLE, INC.:

MAYER BROWN LLP

By: JOHN P. MANCINI, Esq.

BRIAN WILLEN, Esq.

1675 Broadway

New York, New York 10019

(212) 506-2146 jmancini@mayer.com

bwillen@mayer.com

ALSO PRESENT:

GOOGLE

By: ADAM L. BAREA, Litigation Counsel

1600 Amphitheater Parkway

Mountain View, California 94043

(650) 214-4879 adambarea@google.com

LOU MEADOWS, Videographer.

---oOo---

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

DONAHUE

- 1
- 2 09:23:47 A I would -- I would speak with various media
- 3 09:23:53 companies, providers of video content, and we would
- 4 09:23:57 negotiate terms of an agreement which we would sign
- 5 09:24:03 regarding the licensing of their programming for the
- 6 09:24:06 service.
- 7 09:24:06 Q And did Akimbo pay for the licenses?
- 8 09:24:25 A It was primarily revenue-share oriented.
- 9 09:24:28 Q And --
- 10 09:24:29 A I think in some cases we did pay guarantees
- 11 09:24:32 or some sort of license fees.
- 12 09:24:34 Q And when you say revenue sharing, are you
- 13 09:24:37 referring to revenue sharing of advertising revenue?
- 14 09:24:40 A Akimbo's model was a combination of a few
- 15 09:24:44 different things. It's probably why it didn't work.
- 16 09:24:47 They had a pay-per-view and a subscription model and
- 17 09:24:50 then I think they were hoping to have an advertising
- 18 09:24:54 model at some point, but they never did, to my
- 19 09:24:57 knowledge.
- 20 09:24:57 Q And you were at Akimbo until January of 2006;
- 21 09:25:07 is that correct?
- 22 09:25:08 A Yeah, that's right.
- 23 09:25:08 Q And in January of 2006, you joined YouTube?
- 24 09:25:11 A Yeah.
- 25 09:25:11 Q And in what capacity did you join YouTube?

DONAHUE

1

2 09:25:15 A I joined as the VP of marketing and

3 09:25:17 programming.

4 09:25:18 Q And who did you report to in the January '06

5 09:25:24 time period?

6 09:25:25 A Chad Hurley.

7 09:25:26 Q Did you have any direct reports to you?

8 09:25:34 A Yeah, Julie Supan reported to me, and then

9 09:25:40 later, for a short period of time, Micah Schaffer

10 09:25:44 reported to me. I'd say a few weeks later, after I

11 09:25:47 started, I believe.

12 09:25:48 Q And what were you hired to do as the VP of

13 09:25:52 marketing and programming?

14 09:25:54 A I was to manage PR, which Julie was sort of

15 09:25:59 handling on a more day-to-day level. I was to look

16 09:26:06 for ways to, you know, market YouTube in various ways.

17 09:26:14 We were just looking at, you know, how -- how

18 09:26:20 would we -- how would we, you know, grow the business,

19 09:26:23 and -- and -- and then the programming piece of what I

20 09:26:27 was doing was -- it was -- the initial idea was to

21 09:26:35 kind of redesign the site to some degree and go out

22 09:26:39 and license programming from providers of content,

23 09:26:44 similar to what I did at Akimbo, and create areas on

24 09:26:48 the site where we could really, you know, promote that

25 09:26:53 content we had licensed from these providers of

DONAHUE

1

2 09:26:56 content.

3 09:26:59 Q And how did you come to leave Akimbo and go

4 09:27:02 work for YouTube?

5 09:27:04 A What do you mean exactly by that?

6 09:27:06 Q How did you hear about an opportunity at

7 09:27:07 YouTube?

8 09:27:10 A I noticed YouTube in the blogs and saw that

9 09:27:14 it had been commented on a few times as being

10 09:27:18 something that was interesting, and so I went to the

11 09:27:20 site. It looked very interesting to me, and so I was

12 09:27:26 asking people I knew about the company.

13 09:27:30 I spoke to my brother about it, whose name is

14 09:27:35 Ryan Donahue, and Ryan used to work at PayPal with

15 09:27:40 Chad Hurley. So Ryan mentioned to me that Chad was

16 09:27:44 the CEO of the company, and that really kind of gave

17 09:27:47 me the motivation to contact Chad and to say to him,

18 09:27:53 you know, I'd be interested in speaking to you about,

19 09:27:56 you know, working with you. Does that make sense?

20 09:28:03 Q And after you contacted Chad Hurley, at some

21 09:28:09 point you were hired; correct?

22 09:28:11 A That's correct.

23 09:28:12 Q The rest, as they say, is history?

24 09:28:15 A I guess so.

25 09:28:25 MS. CUNHA: Let's mark this as the first

1 DONAHUE

2 10:45:06 MR. MANCINI: Objection to form.

3 10:45:10 THE WITNESS: I don't think so. I don't

4 10:45:11 remember.

5 10:45:11 MS. CUNHA: Q. You never had any

6 10:45:12 communications like that with him?

7 10:45:14 A Could have been, but I -- I don't recall.

8 10:45:16 Q How about with Maryrose Dunton?

9 10:45:19 MR. MANCINI: Same objection.

10 10:45:20 THE WITNESS: I don't think so.

11 10:45:21 MS. CUNHA: Q. Was your position

12 10:45:26 restructured at some point after you joined?

13 10:45:28 A Yes, it was.

14 10:45:28 MR. MANCINI: Objection to form.

15 10:45:29 MS. CUNHA: Q. And when was that?

16 10:45:34 A By "restructured," I'm assuming you mean did

17 10:45:37 I change my position? Was -- was I put into a

18 10:45:39 different position from what I started as? Is that

19 10:45:41 what you mean?

20 10:45:42 Q Sure.

21 10:45:46 A And -- and you're saying when was that? When

22 10:45:48 did that change?

23 10:45:49 Q When did that occur?

24 10:45:50 A A few months into the position.

25 10:45:53 Q And how did your position change?

DONAHUE

1

2 10:45:55 A I started as VP of marketing and programing,
3 10:45:58 and I became VP of content. And rather than reporting
4 10:46:02 to Chad Hurley, I reported to Chris Maxcy.

5 10:46:06 Q And what is your understanding as to why your
6 10:46:08 position changed?

7 10:46:11 A I don't know.

8 10:46:14 Q No one told you?

9 10:46:17 A It -- as I recall, it just seemed to make
10 10:46:21 more sense that my focus should be on the content
11 10:46:26 partnerships, and that was my experience and
12 10:46:32 expertise. I was happy to pursue that as my -- as my
13 10:46:37 focus, as opposed to the marketing and programming
14 10:46:41 role.

15 10:46:42 Q Who communicated this change to you?

16 10:46:44 A Chad Hurley.

17 10:46:44 Q And what did he say when he communicated it
18 10:46:46 to you?

19 10:46:51 A I don't recall specific words he said, but
20 10:46:53 something to the effect of what I just told you.

21 10:46:56 Q Did he express any -- strike that.

22 10:47:05 Did he -- did he express to you that there
23 10:47:10 was any dissatisfaction with the way you had been
24 10:47:11 performing your job up to that point?

25 10:47:14 A No, he didn't.

1 DONAHUE

13:17:43 2 environment we're in, things are fast-moving, and
13:17:48 3 we're very busy, and you're in a startup environment
13:17:52 4 where things are coming together and ideas are being
13:17:59 5 sent around in e-mail constantly. You don't always
13:18:02 6 follow up on -- on e-mails that you are CCed on.

13:18:07 7 MS. CUNHA: Q. You see it refers to "We
13:18:09 8 should probably de-feature this," and then it has a
13:18:13 9 link?

13:18:13 10 A I see that.

13:18:14 11 Q Do you know what it means to "de-feature"
13:18:18 12 something on YouTube?

13:18:20 13 A I'm assuming he -- he may have been talking
13:18:23 14 about we had one area where we would feature videos,
13:18:27 15 which is the Homepage. So I'm assuming he means
13:18:30 16 removing it from being a featured video on the
13:18:32 17 Homepage.

13:18:33 18 Q How did something become a featured video?

13:18:36 19 A Someone would feature it with a tool that we
13:18:39 20 would use.

13:18:42 21 Q And in the 2006 time frame, who would do the
13:18:47 22 featuring?

13:18:48 23 A Originally it was Steve who did it, and then
13:18:51 24 it was my job to do it, and after that, I believe,
13:18:57 25 Maryrose did it, and now other people do it.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585